



INTERIOR BOARD OF INDIAN APPEALS

Town of Charlestown, Rhode Island v. Eastern Area Director, Bureau of Indian Affairs

18 IBIA 67 (12/05/1989)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

TOWN OF CHARLESTOWN, RHODE ISLAND
v.
EASTERN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-53-A

Decided December 5, 1989

Appeal from a decision of the Eastern Area Director, Bureau of Indian Affairs, to take certain land into trust status for the benefit of the Narragansett Indian Tribe of Rhode Island.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Lands: Trust Acquisitions

The approval of requests to acquire land in trust status for an Indian tribe or individual is committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

2. Indians: Lands: Trust Acquisitions

Nothing in the Rhode Island Indian Claim Settlement Act, 25 U.S.C. §§ 1701-1716 (1982), precludes the acquisition of the settlement lands in trust status for the benefit of the Narragansett Indian Tribe of Rhode Island or imposes requirements for acquisition beyond those contained in 25 CFR Part 151.

3. Indians: Lands: Trust Acquisitions

When the Bureau of Indian Affairs reviews a request to acquire land in trust status for an Indian tribe or individual, it is required to consider the factors listed in 25 CFR 151.10. Proof of the Bureau's consideration of the factors it relies upon to deny a trust acquisition application must appear in the administrative record.

APPEARANCES: Deming E. Sherman, Esq., Providence, Rhode Island, for appellant; John H. Harrington, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Atlanta, Georgia, for appellee. 1/

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Town of Charlestown, Rhode Island (Town), challenges a September 12, 1988, decision of the Eastern Area Director, Bureau of Indian Affairs (Area Director; BIA), to accept approximately 1,800 acres of land in trust status for the benefit of the Narragansett Indian Tribe of Rhode Island (tribe). For the reasons discussed below, the Board affirms that decision.

Background

In January 1978, the tribe filed two lawsuits in the United States District Court for the District of Rhode Island concerning its claim to approximately 3,200 acres of public and private land within the boundaries of the Town. A settlement was reached by the parties on February 28, 1978. In implementation of the settlement agreement, both Congress and the Rhode Island Legislature enacted legislation. Rhode Island Indian Claims Settlement Act of 1978, as amended, 25 U.S.C. §§ 1701-1716 (1982) (Settlement Act); 2/ Narragansett Indian Land Management Corporation Act of 1979, as amended, R.I. Gen. Laws §§ 37-18-1 through 37-18-15. Pursuant to the settlement agreement and the implementing Federal and State legislation, approximately 900 acres of State-owned land and approximately 900 acres of privately-owned land were to be transferred to the Narragansett Indian Land Management Corporation (corporation), which was to be chartered by the State.

The tribe received Federal acknowledgment in 1983. By notice published in the Federal Register on February 10, 1983, the Assistant Secretary - Indian Affairs issued a determination pursuant to 25 CFR Part 83 that the tribe existed as an Indian tribe. 48 FR 6177 (Feb. 10, 1983). In 1985, the Rhode Island Legislature enacted legislation providing for expiration of the corporation and transfer of the settlement lands to the Federally acknowledged tribe. P.L. 1985, ch. 386, R.I. Gen. Laws §§ 37-18-12 through 37-18-14.

Following transfer of the settlement lands to the tribe, the tribe sought to have them taken into trust pursuant to 25 U.S.C. § 465 and declared an Indian reservation pursuant to 25 U.S.C. § 467. See Resolutions Nos. 87-77 and 87-78, adopted on January 7, 1987, and Resolutions Nos. 87-169 and 87-170, adopted on February 13, 1988. By letter of

1/ The Board also received a notice of appearance from Lloyd G. "Running Wolf" Wilcox and Lawrence E. Ollivierre, who stated they were appearing as interested parties on behalf of the Narragansett Tribe. However, they filed no briefs or position statements.

2/ All further references to the United States Code are to the 1982 edition.

January 16, 1987, the tribe advised the Town that it had requested trust and reservation status for the settlement lands and invited the Town to submit its comments to the Secretary of the Interior. By letters of January 30, 1987, the Area Director sought comments from the Town, the State, and Washington County concerning the trust acquisition request.

The Town responded by letter of March 23, 1987, expressing a number of concerns related to land use and jurisdiction. By letter of April 2, 1987, the Area Director addressed some of the Town's concerns, offered to meet with Town representatives, and stated that the Town's comments would be taken into consideration in the trust acquisition decision. 3/

Under instructions in effect in 1987, Area Directors were required to submit applications for off-reservation trust acquisitions to the Assistant Secretary - Indian Affairs for preliminary review and approval. Acting pursuant to these instructions, on October 26, 1987, the Area Director submitted the tribe's application to the Assistant Secretary, recommending that the trust acquisition request be approved. 4/ The Assistant Secretary requested further information from the Area Director and, by memorandum of March 11, 1988, the Area Director supplemented his recommendation with additional information.

The Assistant Secretary subsequently authorized Area Directors to approve off-reservation trust acquisition requests without obtaining preliminary approval from him. Following this change of policy, the Acting Assistant Secretary returned the tribe's application to the Area Director for decision. The Acting Assistant Secretary's memorandum, dated July 29, 1988, stated: "We believe the request package is complete and contains the necessary documentation to support the trust acquisition." On September 12, 1988, the Area Director granted the tribe's request and accepted the settlement lands in trust status.

The Town appealed the decision to the Assistant Secretary. Its appeal was still pending on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. See 54 FR 6478 and 6483 (Feb. 10, 1989).

3/ Prior to the March 1987 letter, the Town had twice written to the Assistant Secretary - Indian Affairs expressing similar concerns. These letters, dated Nov. 7, 1986, and Jan. 21, 1987, were responded to by letter of the Area Director dated Dec. 4, 1986, and letter of the Assistant Secretary dated Oct. 27, 1987. The record also shows that a number of meetings were held between Town representatives and BIA staff concerning the trust acquisition request.

4/ The Area Director's memorandum noted that a 15-acre parcel of tribal land had been omitted from the tribe's trust acquisition request because it appeared that title evidence was inadequate. The tribe had filed a quiet title action with respect to this parcel. On Dec. 15, 1987, the tribe amended its trust application to include the parcel after additional title evidence was located, a favorable title opinion obtained, and the quiet title action dismissed.

It was transferred to the Board for consideration under the new procedures on May 16, 1989. The appeal was docketed on May 23, 1989, and a briefing schedule established. The Town filed a brief and the Area Director filed a motion to dismiss the appeal.

Discussion and Conclusions

The Town argues that the Area Director failed to consider adequately the factors set out in 25 CFR 151.10 and that he abused his discretion in accepting the settlement lands in trust status when there were unresolved issues concerning land use, payments for services, and applicability of the Town's ordinances to the land, and when the tribe suffered from internal conflicts. The Town also argues that the Area Director's failure to consider the unresolved issues violated its rights under the Settlement Act and the state legislation. It appears to argue that the Area Director should have clarified matters which it believes were not made clear in the legislation. ^{5/}

The Area Director moves to dismiss the appeal on the grounds that his decision was based on the exercise of discretion and the Board therefore lacks jurisdiction over it under 43 CFR 4.330(b)(2) (54 FR 6487, Feb. 10, 1989). ^{6/}

[1] In several recent decisions, the Board has discussed its role in reviewing BIA decisions concerning the acquisition of land in trust status. See, e.g., Day County, South Dakota v. Aberdeen Area Director, 17 IBIA 204 (1989); City of Eagle Butte, South Dakota v. Aberdeen Area Director, 17 IBIA 192, 96 I.D. 328 (1989). In City of Eagle Butte, the Board observed that such decisions are committed to BIA's discretion and that the Board does not have jurisdiction to substitute its judgment for BIA's. Cf. State of Florida v. United States Department of the Interior, 768 F.2d 1248 (11th Cir. 1985), cert. denied, 475 U.S. 1011 (1986). The Board concluded, however, that it does have authority to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretionary authority. 17 IBIA at 195-96, 96 I.D. at 330, and cases cited therein.

[2] In this case, the Board must consider whether any Federal statute, in particular, the Settlement Act, includes a legal prerequisite to the acquisition of the settlement lands in trust status. The act makes no

^{5/} For instance, it notes that the Federal legislation, while making State law applicable to the settlement lands, did not explicitly address the question whether municipal ordinances were to be applicable.

^{6/} 43 CFR 4.330(b)(2) provides:

"Except as otherwise permitted by the Secretary or the Assistant Secretary - Indian Affairs by special delegation or request, the Board shall not adjudicate:

* * * * *

"(b) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority."

specific reference to trust acquisition of the settlement lands; rather it contemplates transfer of the lands to the corporation. 25 U.S.C. § 1706. It does, however, anticipate the possibility that the tribe might receive Federal acknowledgment and provides that

if the Secretary subsequently acknowledges the existence of the Narragansett Tribe of Indians, then the settlement lands may not be sold, granted, or otherwise conveyed or leased to anyone other than the Indian Corporation, [7/] and no such disposition of the settlement lands shall be of any validity in law or equity, unless the same is approved by the Secretary pursuant to regulations adopted by him for that purpose.

25 U.S.C. § 1707(c). A 1980 amendment to the Settlement Act provides an explicit tax exemption for the settlement lands. Act of December 24, 1980, P.L. 96-601, § 5(a), 25 U.S.C. § 1715(a). These statutory provisions restricting alienation and prohibiting taxation are entirely consistent with the acquisition of the lands in trust status.

The Board finds nothing in the Settlement Act that precludes trust acquisition of the settlement lands or imposes any requirements for their acquisition beyond those contained in 25 CFR Part 151. The Board is also unaware of any other provision of Federal law that imposes any additional requirements.

[3] Under City of Eagle Butte, the Board must consider whether the Area Director properly followed the procedures set out in 25 CFR Part 151. 25 CFR 151.10 requires BIA to consider a number of factors in evaluating trust acquisition requests:

- (a) The existence of statutory authority for the acquisition of land in trust status and any limitations contained in such authority;
- (b) The need of the individual Indian or the tribe for additional land;
- (c) The purposes for which the land will be used;
- (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;
- (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

7/ The "Indian Corporation" is defined in 25 U.S.C. § 1702(a) as "the Rhode Island nonbusiness corporation known as the 'Narragansett Tribe of Indians.'"

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

With respect to BIA's analysis of these factors, the Board stated in City of Eagle Butte, 17 IBIA at 196-97, 96 I.D. at 331:

Proof that these factors were considered must appear in the record. Because the final decision on whether or not to acquire land in trust status is committed to BIA's discretion, there is no requirement that BIA reach a particular conclusion as to each factor. See also State of Florida, 768 F.2d at 1256: "The regulation does not purport to state how the agency should balance these factors in a particular case, or what weight to assign to each factor." In order to avoid any allegation of abuse of discretion, however, BIA's final decision should be reasonable in view of its overall analysis of the factors listed in section 151.10.

Although the Town argues that the Area Director's consideration of these factors was inadequate, the record shows that he gave all the factors extensive consideration. All are discussed at length in the Area Director's memoranda of October 27, 1987, and March 11, 1988. The record also shows that the Area Director gave thorough consideration to the Town's concerns, even though his ultimate decision was adverse to the Town's position. The Board concludes that the Area Director's decision, reached after consideration of the relevant factors, was reasonable.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Eastern Area Director's September 12, 1988, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge